STATE OF NORTH CAROLINA
COUNTY OF HARNETT

FILED
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HARNETT CO., C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17CVS1747

DOLLIE GRIGGS, AS ADMINISTRATOR OF THE ESTATE OF CHRISTIAN GRIGGS,

Plaintiff,

v.

WILLIAM PAT CHISENHALL,

Defendant.

PLAINTIFF'S MOTIONS IN LIMINE

Plaintiff, pursuant to Rule 16 of the North Carolina Rules of Civil Procedure, moves the Court, *in limine*, for an order absolutely prohibiting the Defendant, his counsel, and witnesses from mentioning, testifying about, using exhibits referring to, arguing about, or in any other way bringing to the attention of the jury, directly or indirectly, during any portion of the trial, any of the matters listed below.

1. **That Defendant was not charged with a crime in connection with the death of Plaintiff's decedent.**

"[A] danger exists that the jury in a civil action will give undue weight to evidence that the defendant was never criminally charged or convicted for his role in the incident at issue." *Hinnant v. Holland*, 92 N.C. App. 142, 150, 374 S.E.2d 152, 157 (1988). For that reason, evidence that a civil defendant was not charged with a crime in connection with an incident at issue is generally excluded under Rule 403 of the North Carolina Rules of Evidence. *Hinnant*, 92 N.C. App. at 150, 374 S.E.2d at 157 (internal citations and quotation marks omitted).

North Carolina cases have repeatedly held that the defense in a civil action cannot elicit testimony that the defendant has no criminal convictions or that the defendant was not criminally charged or convicted in the incident at issue in the case, likewise a plaintiff is barred

from introducing evidence that the defendant was criminally convicted of the matter at issue in the case. *See, e.g. Beanblossom v. Thomas*, 266 N.C. 181, 185–86, 146 S.E.2d 36, 40 (1966) ("Ordinarily, for the purpose of impeachment, a witness may be cross-examined with respect to *his* previous conviction of crime, but it is thought that to admit such evidence in a damage action growing out of the same accident would cause the jury to give undue weight to the conviction."); *Durham Bank & Trust Co. v. Pollard*, 256 N.C. 77, 79, 123 S.E.2d 104, 106 (1961) ("The general and traditional rule supported by a great majority of the jurisdictions is that . . . evidence of a conviction and of a judgment therein, or of an acquittal, rendered in a criminal prosecution, is not admissible in evidence in a purely civil action to establish the truth of the facts on which the verdict of guilty or of acquittal was rendered, or when there is a verdict of acquittal to constitute a bar to a subsequent civil action based on the same facts."); *Fowler-Barham Ford, Inc. v. Indiana Lumbermens Mut. Ins. Co.*, 45 N.C. App. 625, 630, 263 S.E.2d 825, 829 (1980) ("The rule in this State is that evidence of a defendant's conviction in a criminal prosecution for the very acts which constitute the basis of the liability sought to be established in a civil suit is not admissible unless such conviction is based on a plea of guilty."); *Hinnant v. Holland*, 92 N.C. App. 142, 150, 374 S.E.2d 152, 157 (1988) (holding that evidence that the defendant in a wrongful death action was not criminally convicted was not admissible to exonerate the defendant of negligence in a civil action arising from the same circumstances).

2. Any evidence or argument that Plaintiff's decedent once tested positive for marijuana on a drug test.

Rule 403 provides that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the

jury . . . ." N.C. Gen. Stat. §8C-1, Rule 403. "'Unfair prejudice,' as used in Rule 403, means 'an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, as an emotional one.'" *State v. Julian*, 345 N.C. 608, 613, 481 S.E.2d 280, 283 (1997) (internal citations and quotation marks omitted). Generally, if evidence "serve[s] little or no purpose other than to inflame the passions of the jury," it should be excluded as unduly prejudicial. *Clarke v. Mikhail*, 243 N.C. App. 677, 693, 779 S.E.2d 150, 162 (2015) (internal citation omitted).

For instance, in the murder trial of a husband charged with the stabbing death of his wife, evidence related to the victim's drug use was properly excluded because "this evidence was being offered to unfairly prejudice the State, to confuse the issues, and to mislead the jury by inflaming the jury's passions against the victim by implying that she was a drug user." *Julian,* 345 N.C. at 614, 481 S.E.2d 280 at 284. The trial court in *Julian* noted that such evidence would influence the jury in a manner to use "prejudice to secure a verdict in [the case] rather than the law and the facts." *Id.* at 613, 481 S.E.2d at 284.

Additionally, pursuant to Rule 404, evidence of crimes, wrongs, or bad acts is "not admissible to prove the character of a person in order to show that he acted in conformity therewith." N.C. Gen. Stat. §8C-1, Rule 404(b). In *Johnson v. Amethyst Corp.*, which involved allegations that a plaintiff was molested by an employee at a rehabilitation hospital, the Court of Appeals determined that, under Rule 404(b), evidence that the plaintiff engaged in the use of illegal drugs was not admissible. 120 N.C. App. 529, 537–38, 463 S.E.2d 397, 403 (1995).

In accordance with the foregoing principles, evidence or commentary regarding allegations of Plaintiff's decedent once testing positive for marijuana on a drug test should not

be permitted. Such evidence is wholly irrelevant to the issues present in the case.

Moreover, there are no allegations or evidence indicating that Plaintiff's decedent was subject to the influence of drugs at the time of his death, and evidence bearing upon the issue of whether the decedent used drugs years prior to the incident in question is properly excluded, as in *Julian* and *Johnson*.

Rather, the toxicology testing done upon decedent immediately following his death did not find the presence of any alcohol or drugs. This makes this case analogous to *State v. Robinson*, wherein a defendant was charged with felony assault with a deadly weapon with intent to kill inflicting serious injury in connection with beating injuries suffered by a victim. The defendant sought to introduce evidence concerning the victim's propensity for drinking intoxicating beverages and her prior conviction for driving under the influence of intoxicants. The Court, noting that there was specific evidence in the record that the victim had not been drinking at the time she was found beaten and taken to the hospital, held that such evidence was irrelevant and properly excluded because "[t]he evidence which the defendant sought to introduce would not have contradicted that evidence and was, at best, remote and conjectural and would have had no value other than as an invitation to prejudice." *State v. Robinson*, 35 N.C. App. 617, 621, 242 S.E.2d 197, 200–01 (1978).

3. As there is absolutely no evidence that Plaintiff's decedent was under the influence of alcohol, drugs, or any other substance on the day he was killed, the defense should be barred from arguing or suggesting to the contrary.

Once more, the toxicology testing done upon decedent immediately following his death did not find the presence of any alcohol or drugs. There is absolutely no evidence that the decedent was under the influence of alcohol or drugs at the time of his death. Therefore, any argument or statement implying that Plaintiff's decedent may have been under the influence on

the date of his death should be excluded because, pursuant to the principles discussed in the foregoing paragraphs, it is not relevant and is unduly prejudicial. Furthermore, any such implication would be contrary to the specific evidence in this case, and should be excluded under clearly defined North Carolina case law. *See State v. Robinson*, 35 N.C. App. 617, 621, 242 S.E.2d 197, 200–01 (1978) (finding that evidence concerning the victim's alleged propensities for drinking and her prior conviction for driving under the influence of intoxicants was properly excluded where there was specific evidence in the record that the victim had not been drinking at the time she was found beaten and taken to the hospital and that, "[t]he evidence which the defendant sought to introduce would not have contradicted that evidence and was, at best, remote and conjectural and would have had no value other than as an invitation to prejudice."). A party is not permitted to introduce testimony that is not supported by the evidence at trial. *See State v. Nicholson*, 355 N.C. 1, 558 S.E.2d 109, (2001) (holding that the defendant in a murder trial could not submit evidence bearing upon the elements of self-defense when the defendant's own testimony showed that he did not believe it necessary to use deadly force against any individuals to protect himself, because the defendant "was not entitled to introduce expert testimony to bolster a defense which was not supported by the evidence at trial.").

4. As there is absolutely no evidence that Plaintiff's decedent suffered from a psychiatric condition on the day of his death, the defense should be barred from arguing or suggesting to the contrary.

Such argument and suggestions would be improper pursuant to the principles discussed in the immediately preceding sections.

5. That Plaintiff's decedent was the subject of a police report from Georgia in connection with an incident that is temporally remote from the events at issue in this case.

First, the contents of such police report is hearsay within hearsay, and it must be excluded under Rules 801 and 802 of the North Carolina Rules of Evidence. To the extent a hearsay exception were to apply, such argument and evidence is improper pursuant to the principles of relevance, prejudice, and prior bad acts discussed in the foregoing paragraphs. A prior police interaction with Plaintiff's decedent years earlier (of which the Defendant was not aware or involved) does not bear upon Defendant's liability, state of mind, or damages in the present action. Any slight probative value of such evidence, which is denied, would be substantially outweighed by the likelihood that such evidence would be improperly relied upon by the jury in order to render a verdict as opposed to the law and facts of the case. *See Julian,* 345 N.C. at 613–14, 481 S.E.2d 280 at 284.

6. Any implication or reference, during jury selection, opening, examinations, or arguments, about the following matters related to Defendant's socioeconomic or financial situation:

a. The impact that an adverse verdict might have on the Defendant. Such evidence would be irrelevant and therefore subject to exclusion under N.C. Rules of Evidence 401 and 402. Such evidence would be completely improper and also subject to the prohibitions of Rule 403 of the Rules of Evidence. This very type of argument has been condemned by the North Carolina Supreme Court in *Watson v. White*, 309 N.C. 498, 308 S.E.2d 268 (1983) and is prohibited in N.C.P.I. Civil 150.12. *See Watson v. White*, 309 N.C. 498, 507, 308 S.E.2d 268, 274 (1983) (holding that "the trial court erred as a matter of law in failing to sustain plaintiff's objection to the remarks of defendant's counsel, which remarks had no basis in law or fact, but rather injected extraneous considerations concerning defendant's financial situation so far as their capacity

to respond to damages was concerned.").

b. Any adverse consequences on the Defendant that might result from a verdict for the Plaintiff. The financial effect of a particular verdict and the financial condition of the parties is inadmissible. *See Scallon v. Hooper*, 58 N.C. App. 551, 557, 293 S.E.2d 843, 846 (1982) (finding inadmissible the argument "that the defendant would be 'legally obligated to pay every single dollar of [the] verdict . . .' and that the jury must deal 'cautiously and fairly with the estate and the property of [the defendant]'").

c. The ability of the Defendant to pay a judgment against him. The wealth of a Defendant is irrelevant and immaterial. *See Lutz Industries, Inc. v. Dixie Home Stores*, 242 N.C. 332, 344, 88 S.E.2d 333, 342 (1955) (evidence of a defendant's wealth is inadmissible unless punitive damages are at issue: "This is based upon the fundamental principal that in a court of justice neither the wealth of one party or the poverty of the other should be permitted to affect the administration of the law").

d. The Defendant's wealth, lack of wealth, or financial condition. The Defendants' financial condition or ability to pay a judgment are not relevant within the meaning of Rule 401 because they are wholly immaterial to the issues of liability and damages. Because of this lack of materiality and probative value, the wealth of the Defendant is strictly inadmissible under Rule 402. *See Watson*, 309 N.C. at 507, 308 S.E.2d at 274 (impermissible to inject "extraneous considerations concerning defendant's financial situation so far as their capacity to respond to damages was concerned"). *See also,*

Scallon, 58 N.C. App. at 557, 293 S.E.2d at 846.

7. Any reference to verdicts or settlements in similar actions and/or the amounts or nature of any such verdicts or settlements.

Such evidence is inadmissible under N. C. Gen. Stat. §8C-1, Rules 701, 702, 704, and 802.

8. Any examination of witnesses either through direct or cross-examination by Defendant's counsel with the use of documentary evidence, if the evidence is published, read or referenced to the jury but not offered into evidence.

If this occurs, then pursuant to Rule 10 of the *General Rules of Practice for the Superior and District Courts,* the Defendant should not be entitled to the last argument to the jury. *See State v. Rich*, 13 N.C. App. 60, 63, 185 S.E.2d 288, 290 cert. denied and appeal dismissed, 280 N.C. 304, 186 S.E.2d 179 (1972) (stating that photographs must be introduced in evidence before they may be used with a witness during testimony at trial); *Golding v. Taylor*, 23 N.C. App. 171, 175, 208 S.E.2d 422, 425 (1974) (holding that the defendant introduced into evidence as an exhibit a witness affidavit and was, therefore, not entitled to the last argument to the jury).

9. Any offers to settle, statements made during settlement negotiations, or documents created or compiled for purpose of settlement.

Such evidence is not admissible pursuant to N. C. Gen. Stat. §8C-1, Rule 408.

10. Any statement by the Defendants' attorney suggesting, implying or indicating that the Defendants' attorney believes that the Plaintiff, Plaintiff's counsel, or any witness is being untruthful.

Such reference would be improper pursuant to *State v. Miller*, 271 N.C. 646, 157 S.E.2d 335 (1967). In *Miller*, our Supreme Court granted the defendants a new trial because the prosecuting attorney's remarks, during his closing argument, that defendants should not be believed because they were "habitual storebreakers," that they had broken into buildings before,

and that they were involved in a "big time business" of breaking and entering, were highly objectionable. 271 N.C. 646, 657, 157 S.E.2d 335, 344. The defendants in *Miller* did not introduce any evidence as to their reputation for character and, in any event, the prosecutor's statements were abusive and prejudicial. *Id.* The *Miller* Court noted that defendants "should be convicted upon the evidence in the case, and not upon prejudice created by abuse administered by the solicitor in his argument." *Id.*

11. Any implication that the jury can go home quicker if they award the Plaintiff nothing.

Such statement is improper and is intended to induce the jury to take matters into their consideration that are irrelevant to deciding the issues in this case.

12. That by following the law or rules of procedure, evidence, or general practice in North Carolina, Plaintiff or Plaintiff's counsel is in any way doing anything inappropriate, unfair, or trying to hide facts or evidence from the jury, for example, by:

- **a. Making objections;**
- **b. Failing to call certain witnesses to testify, when Defendants' counsel could call these same witnesses;**
- **c. Failing to admit certain exhibits, including medical records, into evidence when such evidence could be presented by the Defendants;**
- **d. Using redacted exhibits;**
- **e. Demanding that Defendants redact exhibits;**
- **f. Having evidence presented through properly authenticated and admitted business or medical records rules or by affidavit or suggesting that such evidence should be given less than full weight by the jury;**
- **g. Presenting evidence by *de bene esse* deposition and videotape; or**
- **h. Seeking costs or attorneys' fees. (Further, because the Court will only rule on these issues after any verdict is rendered, this matter should not be discussed with the jury and counsel and the jury should not speculate as to whether the court will make such awards).**

13. Any implication by the Defendant, his attorney, or any witness that the Court has concluded, believes, favors, or has an opinion as to the strength of either party's case, the validity of the damages being sought, or to the credibility or weight to be accorded to any witness.

Such implication would be improper pursuant to N.C.P.I. Civil 150.20, and such

implication should also be barred with respect to the legal precedent and principles discussed in part one above.

14. That the Plaintiff or Plaintiff's counsel is motivated by greed or profit in filing or pursuing damages in the above-entitled action.

Such arguments or evidence would be improper. In *Corwin v. Dickey,* 91 N.C. App. 725, 373 S.E.2d 149 (1988), the Court of Appeals of North Carolina granted the Plaintiff's Motion for a New Trial due to the fact that the defense counsel made statements alluding to the Plaintiff's motivation by greed or profit during closing argument, which prejudiced the jury and prevented a fair trial. Improper statements made included, but were not limited to, the following: (a) "Any money that you will award will go to the lawyers; this is a lawyer's case, money, money, money! The lawyers brought this case, it is for their benefit. All I see is their financial benefit. What is the world coming to? It is all for money;" (b) "Is it Christian to sue for money? Is it Christian for a stepdaughter to sue her stepfather who was going to take care of her? It's as unchristian as Jim and Tammy Bakker;" and (c) "There will be a reckoning on Judgment Day for persons who are greedy and how will these people defend this?" 91 N.C. App. 725, 729, 373 S.E.2d 149, 151 (1988).

WHEREFORE, the Plaintiff moves the Court that it enter an order *in limine* in accordance with the foregoing.

This the 29th day of November, 2018.

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CERTIFICATE OF SERVICE

The foregoing was served upon the parties of this action via fax, addressed as follows:

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This the 29th day of November, 2018.

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